IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.90 OF 2006
IN
SUIT NO.3699 OF 1995

Master Eric Parviz Khaver and ors. ..Plaintiffs.
Vs.
Manilal Premji Gala and anr. ..Defendants.

Ms. Priyanka Vegad for the Plaintiffs.

Mr.N.C.Parekh i/by M/s. Mansukhlal Hiralal & Co. for the Defendant No.1-Applicant.

CORAM: A.S. OKA, J.
DATE : JULY 24,2007

P.C.

1. This chamber summons has been taken out by the first defendant. Prayer in the chamber summons is for grant of leave to sue the Court Receiver, High Court, Bombay appointed in the present suit, as a party defendant in a proposed RAE Suit to be filed by the first defendant in the Court of Small Causes Court, Bombay against the plaintiffs and others.

2. The chamber summons is opposed by the learned counsel appearing for the plaintiffs. The learned counsel appearing for the plaintiffs submits on instructions that on earlier occasion when this Chamber Summons appeared on Board, this court (Coram: D.G.Karnik, J.) had directed the first defendant to

produce the draft of the plaint and till today the said draft is not produced. It is submitted that unless the draft plaint is produced, leave cannot be granted as prayed.

3. I have considered the submissions. Perusal of the record shows that there is no such order passed by (D.G.Karnik, J.) as contended by the learned counsel for the plaintiffs. In any event, the learned counsel for the plaintiffs is unable to produce a copy of the said order and is also unable to even disclose the date of the said order allegedly passed by this court.

4. It is not in dispute that this court by order dated 11th October, 1995 has appointed the Court Receiver, High Court, Bombay as the Receiver of all the assets of the firm M/s. Roopsons including Shop No.7 on the ground floor of the building known as "Premsons House" more particularly, described in Paragraph - 2 of the affidavit in support of the chamber summons. It is disclosed in the affidavit in support that the first defendant desires to file a suit for eviction against the plaintiffs and the second defendant in the Court of Small Causes. It is stated that the first defendant claims to be the co-owner of the property known as Premsons House in which the aforesaid shop No.7 is

situated. As the Court Receiver, High Court has been appointed as a Receiver in respect of the said shop premises, leave as prayed deserves to be granted. It is not necessary at this stage to go into the merits of the case which is sought to be made out by the first defendant in the suit proposed to be filed by him. All contentions of the parties in the proposed suit, if any, to be filed by the first Defendant are expressly kept open.

5. Hence, chamber summons is made absolute in terms of prayer clause (a).

6. There will be no order as to costs.

(A.S. OKA, J.)